

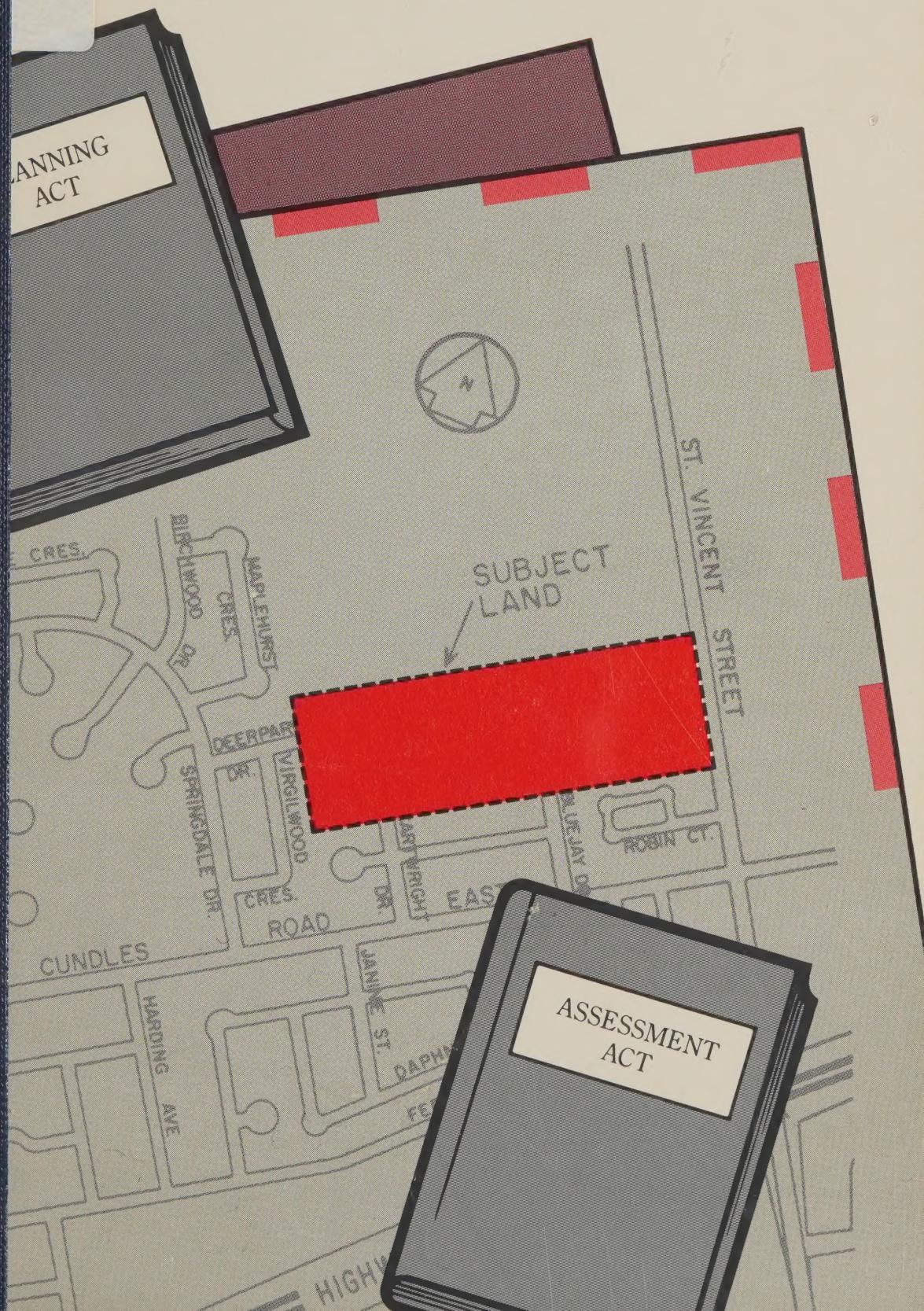
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Government  
Publications

# GOVERNMENT GUIDE TO ONTARIO MUNICIPAL BOARD HEARINGS

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# YOUR GUIDE TO ONTARIO MUNICIPAL BOARD HEARINGS

CAZON  
MA81 ①  
- 2002

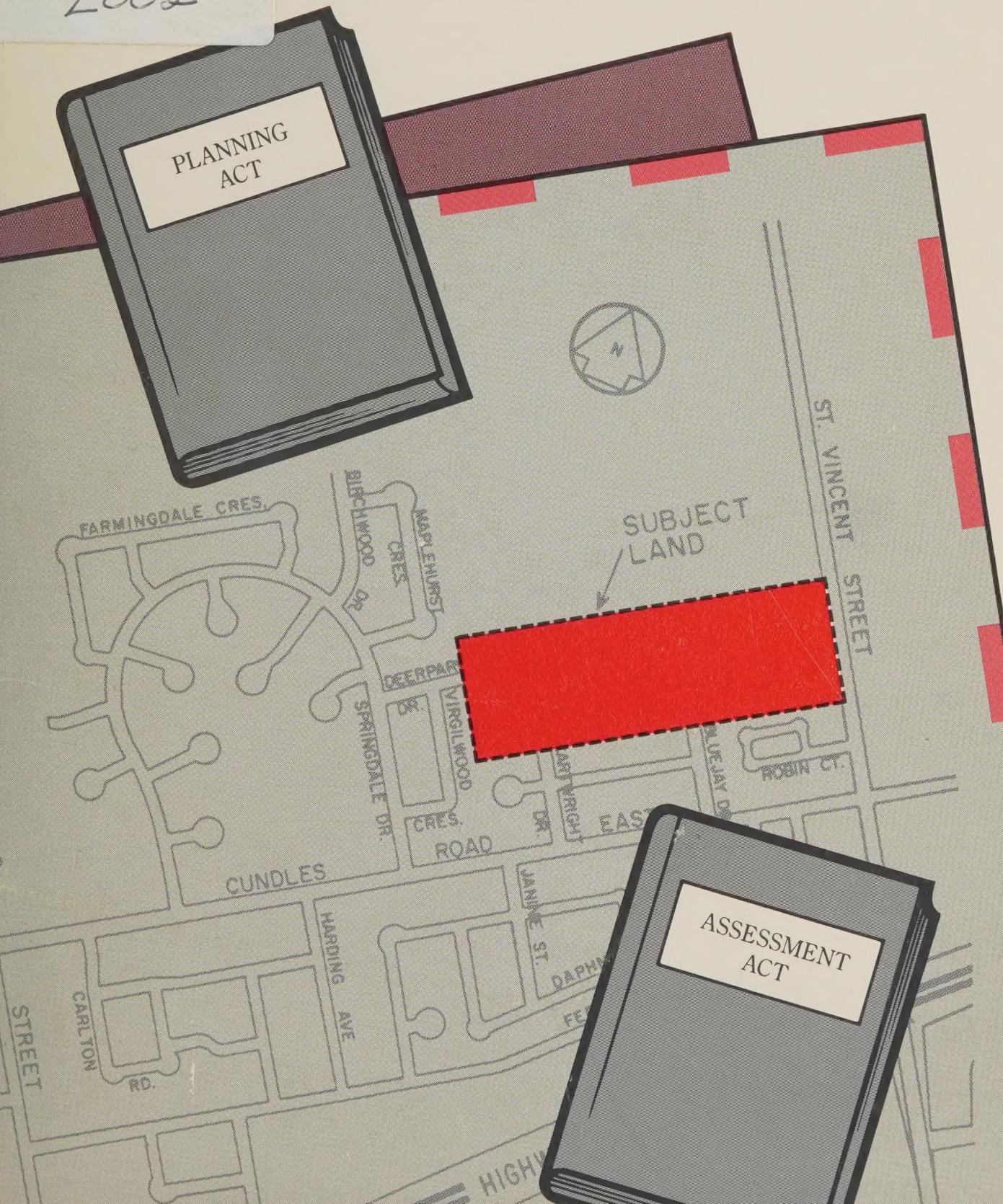
PLANNING  
ACT



ST. VINCENT  
STREET

SUBJECT  
LAND

ASSESSMENT  
ACT





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## INTRODUCTION

This handbook has been designed for anyone attending Ontario Municipal Board hearings, particularly those unfamiliar with Board procedures.

The handbook explains what the Board is, how matters are brought before it and how hearings are conducted. Also included are some comments on decisions and Board orders issued after the hearings have ended.

The word "evidence" is used throughout the handbook. However, unlike the usual practice in the courts, the Board includes within the meaning of the word "evidence" most statements, submissions or concerns a person wishes to present.

Note that this handbook is only a general guide, not a detailed "menu" of how to guarantee success when you bring matters to the Board.

The formal rules governing Board procedures and the legislation giving the Board its powers are not dealt with here. They are covered in Regulation 537/87 and more than 100 Ontario statutes. (Most Board hearings take place under the Planning, Assessment, Expropriations and Municipal acts.)

Copies of Regulation 537/87 and the various acts are available at the Provincial Government Bookstore, 880 Bay Street, Toronto, Ontario M7A 1N8, (416) 965-2054.

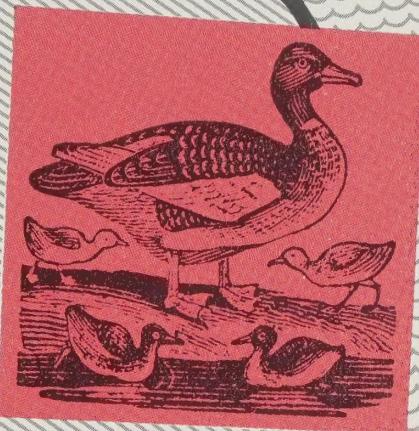
For further information about any aspect of Ontario Municipal Board hearings, please contact us at:

Information Office  
Ontario Municipal Board  
180 Dundas Street West  
Toronto, Ontario  
M5G 1E5  
Tel: (416) 598-2266

The information in this handbook is not legally binding. Any member of the Board has the right to change the way of doing things in a particular case, if appropriate.

EP  
ENVIRONMENTAL  
PROTECTION

RIVER



A1  
PRIME  
AGRICULTURAL



## WHAT THE ONTARIO MUNICIPAL BOARD DOES

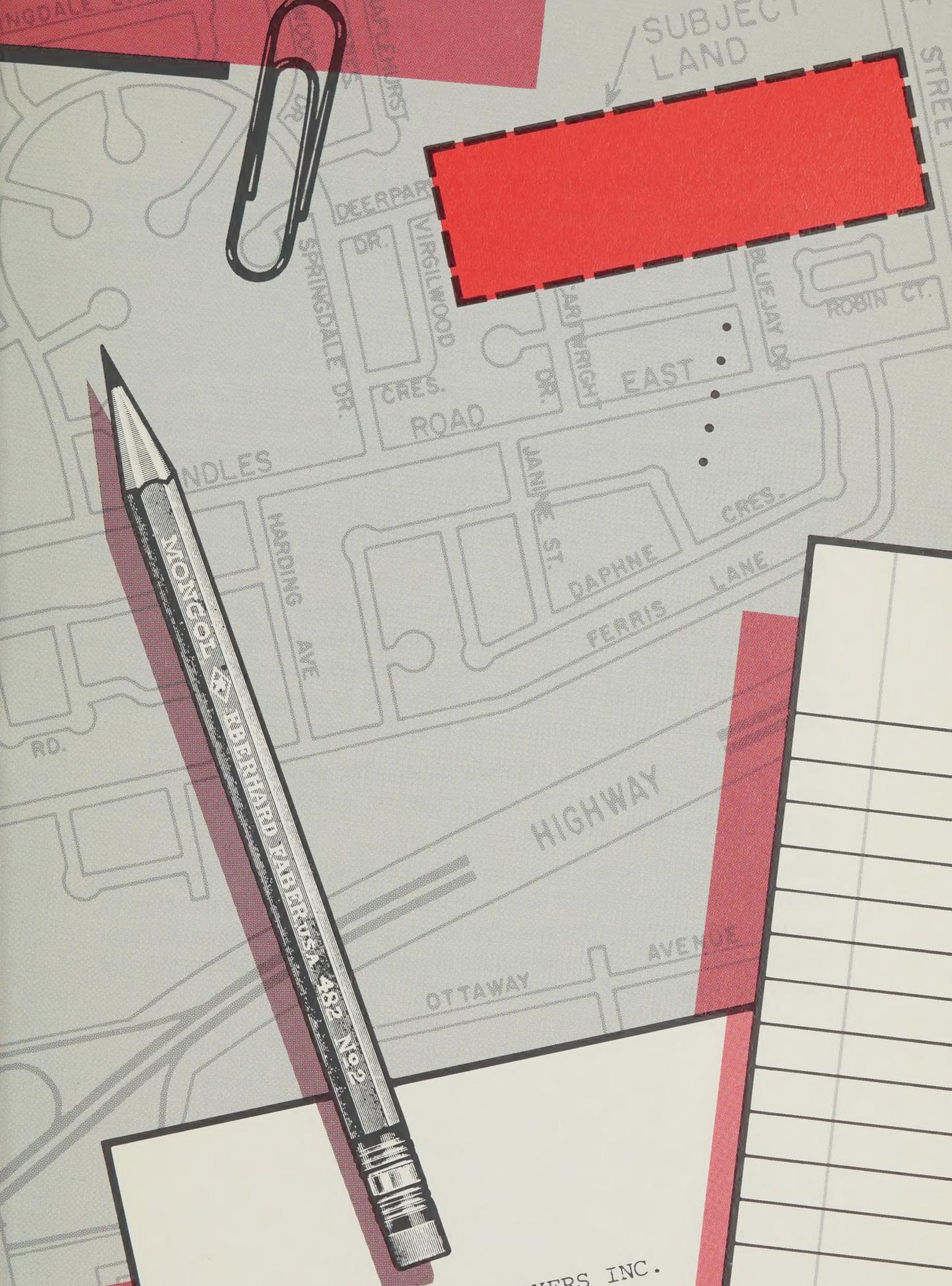
One of the principal responsibilities of the Ontario Municipal Board is the holding of public hearings in which it makes decisions about disputes on municipal matters. In general, matters come to the Board because an individual or group does not agree with the decision of another tribunal, such as a municipal council or a committee of adjustment. The hope of the person making an appeal is that the Board will reach a decision more favorable to him or her.

The Board comprises a chairman, one or more vice-chairmen and enough members for the work load, appointed by the Lieutenant Governor in Council. Members have a wide variety of backgrounds and come from various parts of the province. The staff processes about 6,000 applications each year, of which 60 percent are dealt with administratively at the Board offices in Toronto. The remainder are scheduled for hearings, which are held in municipal buildings, court-houses and facilities of all kinds in every part of the province — always near the origin of the application.

## HOW MATTERS COME TO THE BOARD

The procedure for getting an application to the Board depends on the type of application. Normally, you start an appeal by approaching the municipal clerk, the secretary-treasurer of the land division committee or committee of adjustment or the registrar of the Assessment Review Board for help with procedure. He or she will transmit your appeal to the Board if it has been made in time. In planning matters where a municipality has refused or not acted on an application to amend a zoning by-law, the applicant appeals directly to the Board. Requests to refer official plans or draft plans of subdivision to the Board are made to the Minister of Municipal Affairs or delegate.

The table at the back of this handbook shows, in detail, how to get each type of application to the Board and the time limits.



WEST DUNFORD RATEPAYERS INC.

We're concerned that the  
proposed development will

## **UNINCORPORATED RATEPAYERS' ORGANIZATIONS**

Because of a court decision, these organizations cannot submit appeals in the name of the organization. The Board suggests that the organization appeal in the name of one of its members.

### **MAKING APPEALS ON TIME**

Usually a time limit is set within which to file an appeal. If it is not received by the prescribed date, you won't get the rights of an appellant (person whose appeal prompts the hearing) at the hearing. However, you *may* be permitted to submit evidence in support of an appeal made on time by another person. If that person withdraws his or her appeal, the Board may be without jurisdiction to hold a hearing. Consequently, to make sure *your* point of view is expressed, you should file your own appeal.

Once the Board receives an application or appeal, it generally takes about three to four months before the date of the hearing. This allows time for the staff to prepare and send out notices or direct others to give notice, and for the parties involved to prepare their cases, retaining legal counsel and expert help if necessary.

Notices must be sent out within a specified time prior to the hearing date, depending on the type of application. See the table at the back of this handbook for details.

After a hearing has been scheduled, it is assigned to one or more vice-chairmen or members at the chairman's discretion. In most cases, matters are heard by one member or by two sitting as a panel. Occasionally, however — if the duration or complications warrant it — the chairman may assign a panel of three.

## **ADJOURNMENTS**

In the following circumstances, it is the Board's practice to grant adjournments in advance of hearings without requiring appearances or formal motions:

- when one party has requested the adjournment and the Board is satisfied that all those interested in the matter have indicated their consent;
- when the original applicant has requested an adjournment and notice that is acceptable to the Board can be given to everyone interested in ample time before the scheduled date.

In most other circumstances, requests for adjournment will be heard either as a separate proceeding before the date of the hearing or at the beginning of the hearing itself.

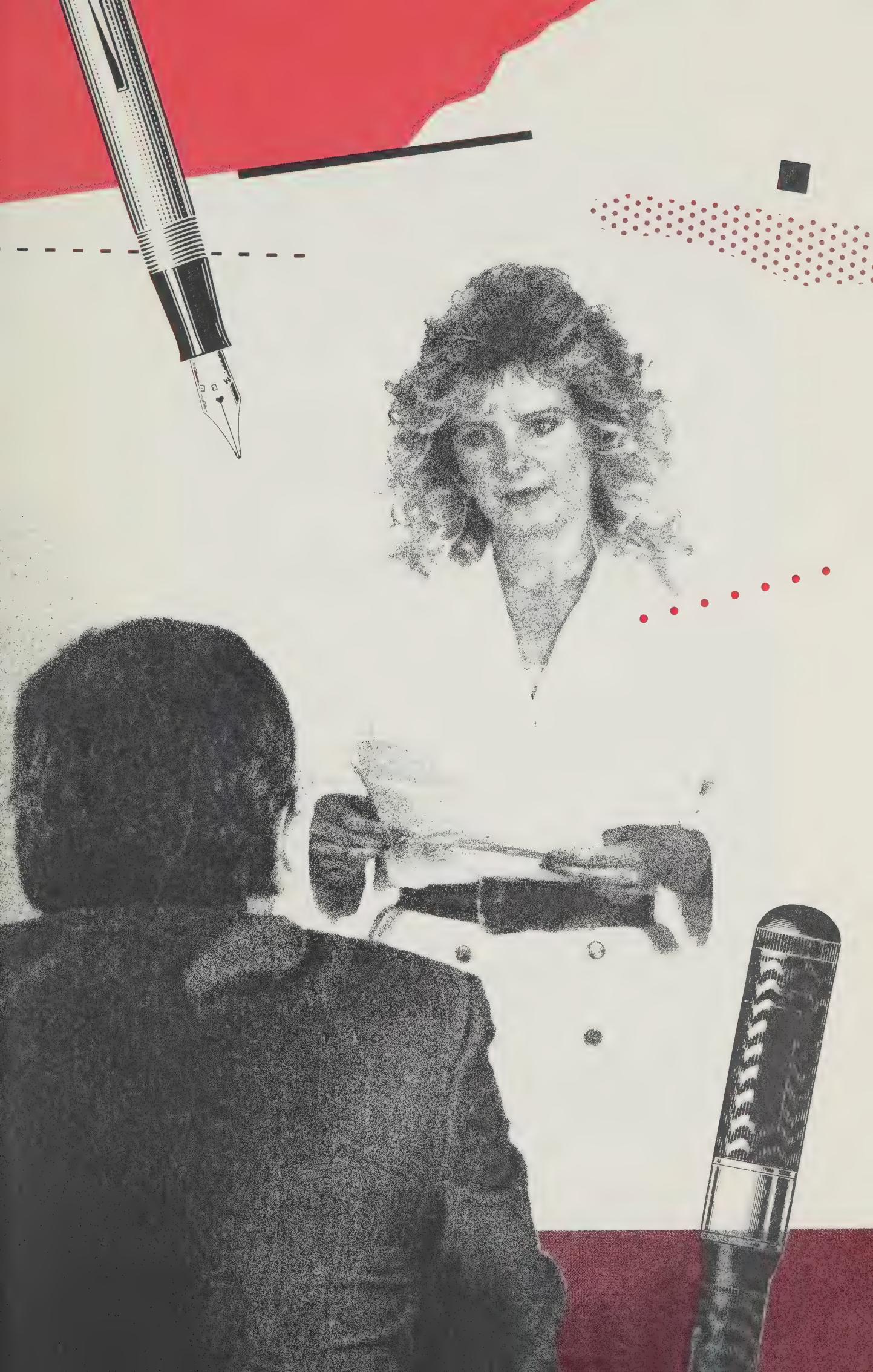
## PROCEDURES AT HEARINGS

At hearings on by-law appeals, the Board can deal only with the matters in the by-law that are under appeal. Most other hearings are treated as new; each application or appeal is looked at from the beginning, as if there were no previous proceeding or decision by a different tribunal — such as a municipal council, a committee of adjustment, a land division committee or a panel of the Assessment Review Board.

In those cases, the Board has the power to make any decision that could have been made by these earlier tribunals. The result is that the original applicant still has the obligation to satisfy the Board that, for example, the variance or the consent to a conveyance (severance) should be granted, the assessment reduced or a draft plan of subdivision approved. The Board must be satisfied that the action requested should be granted — regardless of what the earlier tribunal did with the matter.

Board decisions are based only on the evidence presented at a hearing. If you wish to make the Board aware of any facts other than obvious ones — for instance, water flows downhill — you must present evidence of the facts to the Board at the hearing.

To be sufficiently prepared for a hearing, you should review the Ontario Government legislation relevant to the matter, as well as any municipal legislation that is applicable, such as zoning by-laws and official plans.



## **ORDER IN WHICH CASES ARE PRESENTED**

Legislation sometimes states a specific order in which the parties involved will be heard. If not, the Board — after giving participants the opportunity to state their preference — determines the order, bearing in mind that it wants to be made aware as quickly and completely as possible of the basic facts and law at issue. The table at the back of this handbook shows who usually goes first at each type of hearing.

The party proceeding first gives all of its evidence, followed by that of any other parties in support. Evidence is then heard from the party or parties in opposition. The party that started has the right to reply, but is limited to issues raised by those in opposition.

Finally, the parties have an opportunity to give their final arguments based on all the evidence that has been presented. The order of arguments is the same as that followed in presenting evidence.

## **HOW TO ADDRESS THE BOARD**

Although the procedure at a hearing is court-like in nature, every effort is made to put you at ease during a presentation. However, there are certain formalities to be followed.

If a member of the Board is sitting alone, he or she is automatically the chairman of that panel of the Board and is addressed as Mister or Madam Chairman.

If two or more members form the panel, one is the chairman and is addressed as described above; the others are addressed as Mister or Madam Member.

When addressing the Board during the course of the hearing, it is suggested that you rise unless excused by the chairman for health reasons. Similarly, when the Board members enter or leave the room, it is customary for those attending the hearing to rise.

Since a hearing is a formal proceeding, smoking, eating and drinking are not allowed in the hearing room. The only exception is that the witness, counsel and Board members may drink water.

## **PRESENTING EVIDENCE**

All evidence, unless it is totally uncontroversial — such as an existing official plan or zoning by-law — is presented by or through a witness. The witnesses are all either under oath or affirmed. Any witness may be asked questions by lawyers or agents representing those involved in the hearing or — with the Board’s permission — by other people involved.

## **EXHIBITS**

The term “exhibits” includes all sorts of items — such as pictures, reports, letters or models — that are introduced as evidence. So that the Board can properly store and transport these exhibits at the end of the hearing, you should try to ensure that they can be reduced — usually by folding — to letter or foolscap size.

At the end of the hearing, exhibits will be returned to those who submitted them if requested, with the consent of the other side. Otherwise they will be returned, on request, 40 days after the order on the decision is issued.

## **EXPERT WITNESSES**

People giving “expert-opinion” evidence provide written or oral outlines of their education and experience in their fields of expertise.

## **EXCHANGE OF REPORTS**

If expert witnesses intend to rely on written reports or studies, it is helpful if this material is given to the opposing party (through counsel if one has been retained) as early as possible.

## **SUMMONS TO A WITNESS**

If a proposed witness is unwilling to appear, the Board will, upon request, issue a summons in blank form, signed by the Secretary of the Board, to require attendance by the witness. Summons are available from the Board’s Information Office. To be valid, the summons should be properly served upon the witness, together with the correct amount of money for attendance fee and travelling expenses. The current scale of witness fees is attached to the summons.



## **FAILURE OF A WITNESS TO ATTEND**

If a witness fails to appear at a hearing in response to a summons, his or her attendance may be enforced by having the sheriff of the relevant jurisdiction deliver a warrant of arrest, which must be duly signed by the presiding Board member and sealed with the Board's seal.

## **WITNESSES REPRESENTING OTHER PEOPLE**

The Board may require written authority from anyone represented by another person at a hearing.

If an individual wants to give evidence on behalf of others — for example, as an officer or spokesman of a group — he or she can do so if the group authorizes it, preferably in writing. The Board actually encourages the use of a spokesman as it reduces the need to hear many witnesses say the same thing or ask the same questions.

Legal counsel do not give evidence. However, they may question witnesses and make submissions based on evidence heard. An agent may offer evidence if the Board feels he or she can properly represent the individual involved.

## **ORAL EVIDENCE IN OTHER THAN ENGLISH**

In hearings other than those specifically arranged in advance to be conducted in French in accordance with the Board's rule 14, anyone who doesn't have sufficient understanding or fluency in English should attempt to bring an interpreter to the hearing.

## **COURT REPORTING**

Generally, hearings are not recorded. However, you can arrange for the services of a court reporter at your own expense.

The Board will arrange for the services of a court reporter at its expense for hearings resulting from Notice of Arbitration under the Expropriations Act.

If you request transcripts of evidence, you are responsible for the expense. Copies are to be given to the Board.

Notice of Assessment

This is NOT a Tax Bill

Reference

10  
9 41

The above address will be pleased to explain the  
and is authorized to amend all data (School  
etc.) on this notice before the above date.

Your School Support designation is

**PUBLIC**

See Back of this Notice for Information

tion of terms used

• FOR ASSESSMENT PURPOSES  
• RES/FARM MILL RATE ON

03  
N ST E  
ON ONT L8M 1K2

File Complaint by:

0951D (81-09)

## DECISIONS

Decisions of the Board are either reserved to be delivered in writing at a later date or delivered orally at the end of the hearing. Decisions do not necessarily contain references to all of the evidence heard. Instead, the content generally deals only with the evidence and issues relevant to the relief requested and the decision given.

## DISTRIBUTION

Written copies of oral decisions and reserved decisions are sent by mail to the following individuals:

- all counsel and agents representing parties at hearings;
- all members of the public not represented who gave evidence at the hearing;
- anyone requesting a copy of the decision;
- certain public agencies and officials.

Any oral decision of the Board recorded by a court reporter will require the approval of the Board member delivering the decision before its release in printed form. The decision will then be issued formally by the Board.

## BOARD ORDERS

Most decisions are implemented by Orders of the Board. Usually Board staff prepare the Order. Alternatively, the Board directs one of the counsel involved to prepare a draft Order. In the latter case, after submitting it to the opposing counsel — or parties if there is no counsel — for approval, it is then forwarded to the Board, which prepares and issues the final Order.

In certain circumstances, the Board's decision may delay the issuing of an Order or its effectiveness until certain conditions are fulfilled. The Board relies on outside agencies — either governmental or municipal — to ensure that conditions have been satisfied. The Board has no policing powers to ensure compliance with conditions after they are set.

## REVIEWS AND REHEARINGS

Rule 16 of the Board's rules sets out the procedure under Section 42 of the Ontario Municipal Board Act for requesting a review of a Board decision or a rehearing of a matter that has been heard by the Board. In dealing with such requests the chairman has the following options:

- refuse to grant the request;
- grant the request;
- set a date for a motion to hear submissions from all the parties with respect to the request.

If a panel of the Board decides to grant a motion for a rehearing, it can rehear the matter immediately if it is satisfied with adequacy of the notice. Otherwise the panel will give directions as to the new time and place.

## APPEALS

Board decisions can be appealed either on matters of law or, in some cases, on the merits.

Decisions on matters of law are appealable to the Supreme Court of Ontario (Divisional Court).

Under the Expropriations Act, the merits of a decision are appealable to the courts. Under most other legislation except the Planning and Assessment acts, the merits may be appealed to the Cabinet.

Under the Planning Act — with one exception — all decisions by the Board on the merits are final. The exception involves any matter declared in advance by the Minister of Municipal Affairs to be one of provincial interest. In these circumstances, the final decision rests with Cabinet.

In most cases, solicitors are retained when appeals of Board decisions are contemplated, because of the complications of the procedures involved.

Time limits with respect to these appeals are found in the Rules of Civil Procedure and the Ontario Municipal Board Act.

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FORMATION

the Planning Act)

1) - on plan

key plan

called by developer

LOT 936

STATISTI

Single Family  
Park (Block 1)  
Proposed Road  
Walkway (Block 1)  
Road Widening



APPLICATION  
TYPEHOW TO GET IT  
TO THE BOARD**Official plans**

- when objecting to provisions of a proposed official plan or official plan amendment
- when appealing the refusal or failure of a municipality to amend its official plan

Ask the Minister of Municipal Affairs or delegate\* to refer the matter to the Board before approval.

**By-laws**

- when appealing provisions of a municipality's by-law
- when appealing a refusal or a failure of a municipality to amend its by-law within 30 days of the request

Ask the Minister of Municipal Affairs or delegate\* to refer the matter to the Board.

Submit a notice of appeal to the municipality within 35 days from the date the by-law was passed. The municipality is responsible for sending the appeal to the Board.

Submit the appeal to the Ontario Municipal Board secretary, using the appropriate Board form, available from the municipality or the Board.

**Draft plans of subdivision**

- when citizens object to the plan or
- when a subdivider objects to the plan or refusal to approve

Ask the Minister of Municipal Affairs or delegate\* to refer the matter to the Board before approval.

**Consents (severances)**

- when appealing a decision of a consent- granting body

Send notice of appeal (letter) to secretary of Land Division Committee or Committee of Adjustment within 30 days of decision.

**Minor variances**

- when appealing a decision of the Committee of Adjustment

Send notice of appeal (letter) to secretary of Committee of Adjustment within 30 days of decision.

**Assessments**

Send a notice of appeal to the Regional Registrar within 21 days of mailing of the decision of the Assessment Review Board.

**Expropriations**

Send a notice of arbitration (duly served) to the Board (statutory form required).

**Objections to capital expenditures**

Submit an objection in writing to the municipality within the time limited in the notice.

**Motions**(applications to the Board for a ruling on, for example, an adjournment of hearing)

Request the secretary of the Board for a hearing date.

**All other matters**

Submit a letter to the Board.

\*The Minister of Municipal Affairs has delegated some of the powers and responsibilities to approve official plans and plans of subdivision to some of the regional municipalities and Metro Toronto where the land is in the municipality. Ask your municipal clerk.

# ONTARIO MUNICIPAL BOARD

WHO SENDS NOTICE OF A HEARING **	USUAL NOTICE TIME PRIOR TO A HEARING	WHO USUALLY GOES FIRST AT A HEARING ***
municipality	30 days	municipality
appellant	60 days	appellant
municipality	30 days	municipality (unless appellant is represented by counsel)
appellant	60 days	appellant
subdivider or municipality	30 days	subdivider or municipality
Ontario Municipal Board, unless otherwise directed	30 days	original applicant
Ontario Municipal Board	30 days	original applicant
Ontario Municipal Board	30 days	assessor
respondent	30 days	claimant
municipality	30 days	municipality
moving party	10 days	moving party
depends on nature of the matter	depends on nature of the matter	depends on nature of the matter

\*\* Unless the Board sends the notice, it forwards to the party responsible, in writing, directions as to how to give notice

\*\*\* In lengthy hearings, the procedure for who goes first is sometimes interrupted to permit ratepayers to be heard at a pre-arranged time

## COSTS

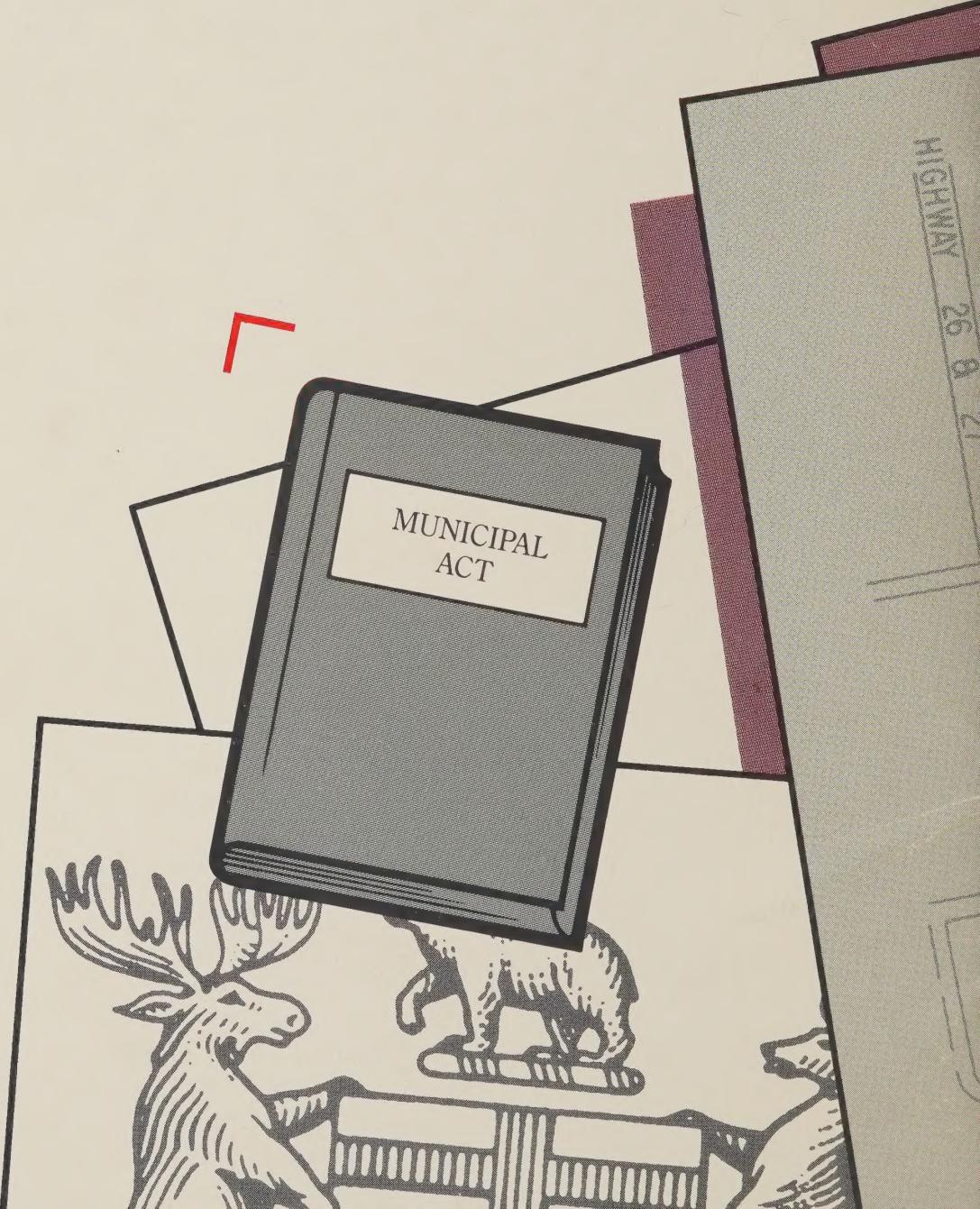
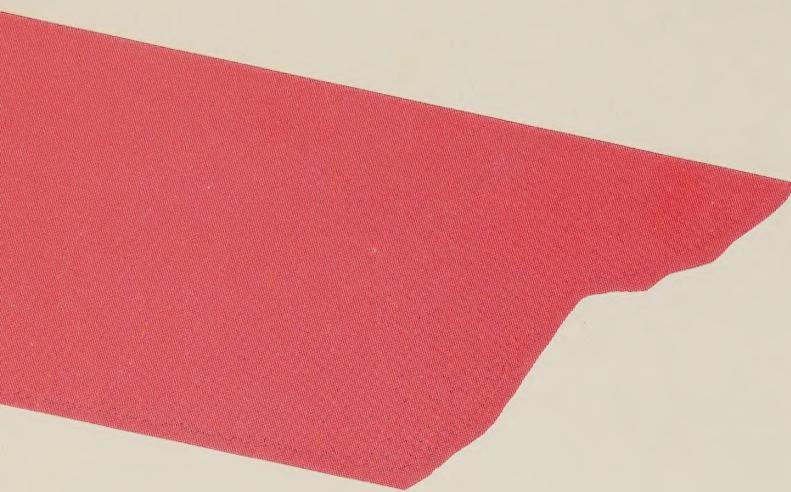
The Board has complete and unlimited discretion to make an award of payment of costs, including the amount, by whom and to whom they are to be paid. It may refer the assessment of costs to an assessment officer of the Supreme Court of Ontario to determine the proper amount.

Briefly stated, the Board's approach to awarding costs is as follows:

1. The Board will not consider an award of costs unless –
  - a) normally, at least one of the parties requests an order for costs; and
  - b) the party against whom an order for costs is sought is given an opportunity to be heard.
2. The Board may award costs against a party whose conduct or course of conduct is found to be clearly unreasonable, frivolous or vexatious, having regard to all the circumstances.
3. The Board has no power to order intervenor funding or security for costs and, therefore, will not do so.

*(For a full review of the Board's approach to costs, please refer to The OMB's Guideline on Costs, available from the Board's Information Office.)*





Ontario  
Municipal  
Board



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